

AMENDED IN ASSEMBLY MAY 2, 2011

AMENDED IN ASSEMBLY APRIL 4, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1376

Introduced by Assembly Member Nestande
(Coauthors: Assembly Members Jeffries and Silva)
(Coauthor: Senator Harman)

February 18, 2011

An act to add Section 6356.7 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

AB 1376, as amended, Nestande. Sales and use taxes: exemption: ~~renewable energy facility.~~ *production of electrical energy.*

The Sales and Use Tax Law imposes a tax on retailers measured by the gross receipts from the sale of tangible personal property sold at retail in this state, or on the storage, use, or other consumption in this state of tangible personal property purchased from a retailer for storage, use, or other consumption in this state.

This bill would exempt from those taxes the sale of, or the storage, use, or other consumption of, tangible personal property purchased ~~for use by a person for the construction of a facility that will use solar, biomass, wind, and geothermal energy to generate electricity of one megawatt or greater~~ *a qualified person for use primarily for the production of electrical energy from renewable sources, as specified, and qualified tangible personal property purchased for use by a contractor for specified purposes, as provided.*

The Bradley-Burns Uniform Local Sales and Use Tax Law authorizes counties and cities to impose local sales and use taxes in conformity with the Sales and Use Tax Law, and existing law authorizes districts, as specified, to impose transactions and use taxes in accordance with the Transactions and Use Tax Law, which conforms to the Sales and Use Tax Law. Exemptions from state sales and use taxes are incorporated into these laws.

This bill would specify that this exemption does not apply to local sales and use taxes or to transactions and use taxes.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6356.7 is added to the Revenue and~~
2 ~~Taxation Code, to read:~~

3 ~~6356.7. (a) There are exempted from the taxes imposed by~~
4 ~~this part the gross receipts from the sale of, and the storage, use,~~
5 ~~or other consumption in this state of, tangible personal property~~
6 ~~purchased for use by a person for the construction of a facility that~~
7 ~~will use solar, biomass, wind, and geothermal energy to generate~~
8 ~~electricity of one megawatt or greater.~~

9 ~~(b) Notwithstanding any provision of the Bradley-Burns~~
10 ~~Uniform Local Sales and Use Tax Law (Part 1.5 (commencing~~
11 ~~with Section 7200)) or the Transactions and Use Tax Law (Part~~
12 ~~1.6 (commencing with Section 7251)), the exemption established~~
13 ~~by this section shall not apply with respect to any tax levied by a~~
14 ~~county, city, or district pursuant to, or in accordance with, either~~
15 ~~of those laws.~~

16 ~~SECTION 1. It is the intent of the Legislature to enact a~~
17 ~~competitive tax policy for producers of electrical energy from~~
18 ~~renewable resources by providing for an exemption from state~~
19 ~~sales and use taxes for the sale of, or the storage, use, or other~~
20 ~~consumption of, equipment used in the production of electrical~~
21 ~~energy from renewable sources.~~

22 ~~SEC. 2. Section 6356.7 is added to the Revenue and Taxation~~
23 ~~Code, to read:~~

1 6356.7. (a) *There are exempted from the taxes imposed by this*
2 *part the gross receipts from the sale of, and the storage, use, or*
3 *other consumption in this state of, both of the following:*

4 (1) *Qualified tangible personal property purchased for use by*
5 *a qualified person to be used primarily for the production of*
6 *electrical energy from renewable sources.*

7 (2) *Qualified tangible personal property purchased for use by*
8 *a contractor purchasing that property for use in the performance*
9 *of a construction contract for the qualified person, who will use*
10 *the qualified tangible personal property as an integral part of the*
11 *production of electrical energy from renewable sources.*

12 (b) *For purposes of this section:*

13 (1) *“Production of electrical energy from renewable sources”*
14 *means the activity of producing electricity from a facility that has*
15 *been certified by the State Energy Conservation and Development*
16 *Commission as being RPS eligible.*

17 (2) *“Qualified person” means any of the following:*

18 (A) *A person who is engaged in those lines of business described*
19 *in Code 237130 (Alternative Energy) of the North American*
20 *Industry Classification System (NAICS) published by the United*
21 *States Office of Management and Budget (OMB), 2007 edition.*

22 (B) *An affiliate of a person qualified pursuant to subparagraph*
23 *(A) shall also be considered a qualified person as long as the*
24 *affiliate is included as a member of that person’s unitary group*
25 *for which a combined report is required to be filed under Article*
26 *1 (commencing with Section 25101) of Chapter 17.*

27 (3) (A) *“Qualified tangible personal property” includes, but*
28 *is not limited to, all of the following:*

29 (i) *Machinery and equipment, including component parts and*
30 *contrivances such as belts, shafts, moving parts, and operating*
31 *structures.*

32 (ii) *Equipment or devices used or required to operate, control,*
33 *regulate, or maintain the machinery and equipment, including,*
34 *but not limited to, computers, data-processing equipment, and*
35 *computer software, together with all repair and replacement parts*
36 *with a useful life of one or more years therefor, whether purchased*
37 *separately or in conjunction with a complete machine and*
38 *regardless of whether the machine or component parts are*
39 *assembled by the qualified person or another party.*

1 (B) “*Qualified tangible personal property*” shall not include
2 any of the following:

3 (i) *Consumables with a normal useful life of less than one year,*
4 *except as provided in clause (v) of subparagraph (A).*

5 (ii) *Furniture, inventory, and equipment not used as an integral*
6 *part of the generation of electrical energy from renewable sources.*

7 (iii) *Tangible personal property used primarily in*
8 *administration, general management, or marketing.*

9 (c) *An exemption shall not be allowed under this section unless*
10 *the purchaser furnishes the retailer with an exemption certificate,*
11 *completed in accordance with any instructions or regulations as*
12 *the board may prescribe, and the retailer subsequently furnishes*
13 *the board with a copy of the exemption certificate. The exemption*
14 *certificate shall contain the sales price of the qualified tangible*
15 *personal property that the sale of, or the storage, use, or other*
16 *consumption of, is exempt pursuant to subdivision (a).*

17 (d) (1) *Notwithstanding any provision of the Bradley-Burns*
18 *Uniform Local Sales and Use Tax Law (Part 1.5 (commencing*
19 *with Section 7200)) or the Transactions and Use Tax Law (Part*
20 *1.6 (commencing with Section 7251)), the exemption established*
21 *by this section shall not apply with respect to any tax levied by a*
22 *county, city, or district pursuant to, or in accordance with, either*
23 *of those laws.*

24 (2) *Notwithstanding subdivision (a), the exemption established*
25 *by this section shall not apply with respect to any tax levied*
26 *pursuant to Section 6051.2, 6051.5, 6201.2, or 6201.5, or pursuant*
27 *to Section 35 of Article XIII of the California Constitution.*

28 (e) *Notwithstanding subdivision (a), the exemption provided by*
29 *this section shall not apply to any sale or use of property which,*
30 *within one year from the date of purchase, is removed from*
31 *California, converted from an exempt use under subdivision (a)*
32 *to some other use not qualifying for the exemption, or used in a*
33 *manner not qualifying for the exemption.*

34 (f) *If a purchaser certifies in writing to the seller that the*
35 *property purchased without payment of the tax will be used in a*
36 *manner entitling the seller to regard the gross receipts from the*
37 *sale as exempt from the sales tax, and within one year from the*
38 *date of purchase, the purchaser removes that property from*
39 *California, converts that property for use in a manner not*
40 *qualifying for the exemption, or uses that property in a manner*

1 *not qualifying for the exemption, the purchaser shall be liable for*
2 *payment of sales tax, with applicable interest, as if the purchaser*
3 *were a retailer making a retail sale of the property at the time the*
4 *property is so removed, converted, or used, and the sales price of*
5 *the property to the purchaser shall be deemed the gross receipts*
6 *from that retail sale.*

7 *(g) This section applies to leases of qualified tangible personal*
8 *property classified as “continuing sales” and “continuing*
9 *purchases” in accordance with Sections 6006.1 and 6010.1. The*
10 *exemption established by this section shall apply to the rentals*
11 *payable pursuant to such a lease, provided the lessee is a qualified*
12 *person and the property is used in an activity described in*
13 *subdivision (a). Rentals that meet the foregoing requirements are*
14 *eligible for the exemption for a period of six years from the date*
15 *of commencement of the lease. At the close of the six-year period*
16 *from the date of commencement of the lease, lease receipts are*
17 *subject to tax without exemption.*

18 ~~SEC. 2.~~

19 *SEC. 3. This act provides for a tax levy within the meaning of*
20 *Article IV of the Constitution and shall go into immediate effect.*